

R590. Insurance, Administration.**R590-154. Unfair Marketing Practices Rule. (Effective 8-7-02)****R590-154-1. Authority.**

This rule is adopted pursuant to Subsection 31A-2-201(3) in which the commissioner is empowered to adopt rules to implement the provisions of the Utah Insurance Code and Subsection 31A-23-302(8), which provides that the commissioner may find certain practices to be misleading, deceptive, unfairly discriminatory, provide an unfair inducement, or unreasonably restrain competition, and to prohibit them by rule.

R590-154-2. Purpose and Scope.

The purpose of this rule is to provide guidance to all licensees regarding unfair marketing practices.

R590-154-3. Definitions.**A. "Agency" means**

1. A person other than an individual, including a sole proprietorship by which a natural person does business under an assumed name; and 2. An insurance organization licensed or required to be licensed under Section 31A-23-212(3).

B. "Barter" means the sale of an insurance or annuity contract for anything of value other than cash or other negotiable instruments.

C. "Producer" means a person licensed or required to be licensed under the laws of this state to sell, solicit, or negotiate insurance. With regards to the selling, soliciting, or negotiating of an insurance product to an insurance customer or an insured:

1. "Producer for the insurer" means a producer who is compensated directly or indirectly by an insurer for selling, soliciting, or negotiating any product of that insurer.

2. "Producer for the insured" means a producer who is compensated directly and only by an insurance customer or an insured and receives no compensation directly or indirectly from an insurer for selling, soliciting, or negotiating any product of that insurer to that insurance customer or insured.

R590-154-4. Findings.

The commissioner finds that each of the practices prohibited in this rule constitute misleading, deceptive or unfairly discriminatory practices or provide an unfair inducement or unreasonably restrain competition, except as specifically allowed in this rule.

R590-154-5. Producer, Limited Lines Producer or Consultant Agency Name.

A. An insurance producer, limited lines producer or consultant agency licensed under the laws of this state shall not use any name that is:

- (1) misleading or deceptive;
- (2) likely to be mistaken for another licensee already in business; or
- (3) implies association or connection with any other organization where actual bona fide association or connection does not exist.

B. A producer, limited line producer or consultant agency licensee shall comply with either of the following:

1. The agency shall include words such as "insurance agency" or "insurance consultant" or other similar words in the agency's name.

(a) Other similar words such as "insurance services", "insurance benefits", "insurance counselors", or "insurance advisors" may also be used.

(b) "Insurance consulting," "insurance consultants" or similar words shall only be used if the agency is licensed as a consultant.

2. The agency shall state that the licensee is an insurance agency in any letterhead,

business cards, advertising, slogan, emblem, or other promotional material used or distributed by the agency in the State of Utah

R590-154-6. Individual Licensee Name.

A. An individual shall be licensed using the individual's full legal name - first name or initial, middle name or initial, last name, suffix, jr/sr/II/III/etc.

B. An individual may file with the department a preferred name or nickname to use in combination with the individual's full legal name.

R590-154-7. Sale, Solicitation, or Negotiation of Insurance.

A. An individual licensee and a producer, limited line producer or consultant agency licensee shall not mislead or deceive a person or organization through oral contact or through any letterhead, business cards, advertising, slogan, emblem, or other promotional material used or distributed in Utah by:

1. failing to disclose that the licensee is an individual insurance licensee or a producer, limited line producer or consultant agency licensee in every oral or written contact; or

2. using or implying license classifications not held by the individual licensee or natural persons designated to the producer, limited line producer or consultant agency licensee; or

3. using a name other than the exact name appearing on the producer, limited line producer or consultant agency license; or

4. using a name other than the individual licensee's full legal name exactly as filed with the department; or

5. using an individual's preferred name or nickname when the preferred name or nickname has not been filed with the department; and

B. the use of an initial letter, rather than the full first or middle name is not a violation of this section.

C. An individual may only use the name of a producer, limited line producer or consultant agency that has its own separate agency license if the individual licensee is designated to act under that agency's license.

D. An individual may not sell, solicit, or negotiate insurance as a producer, limited line producer or consultant agency unless the individual has a separate producer, limited line producer or consultant agency license and the individual is designated to act under the agency's license.

R590-154-8. Claiming or Representing Department Approval.

A. A licensee may not represent, either directly or indirectly, that the Utah Insurance Department, the insurance commissioner, or any employee of the department, has approved, reviewed, endorsed, or in any way favorably passed upon any marketing program, insurance product, insurance company, practice or act.

B. A licensee may report the fact of the filing of any form, financial report, or other document with the Insurance Department, or of licensure, examination or other action involving the department, or the commissioner but may not misrepresent their effect or import.

R590-154-9. Bartering for Insurance.

Any licensee bartering for the sale of insurance or an annuity contract shall fully document the receipt of goods, services or other thing of value, establishing the value of the thing received and how the value was established, from whom received, the date received, and the premium cost of the insurance or annuity contract bartered for, and shall

retain said documentation for three years following the expiration of the policy period or bartering transaction, whichever is longer. Any licensee bartering for the sale of an insurance or annuity contract shall disclose at the time of application to the insurer said bartering arrangement.

R590-154-10. Prohibited Insurance Sales Tie-Ins.

Multi-level marketing programs, investment programs, memberships, or other similar programs, designed or represented to produce or provide funds to pay all or any part of the cost of insurance constitutes an illegal inducement. This does not preclude the provision of insurance through a bona fide employee benefits program.

R590-154-11. Inducements, Gifts and Merchandise Given in Connection With Solicitation or Sale of Insurance.

A. A licensee may not give or offer to give any prizes, goods, wares, merchandise or item of value as an inducement to enter into any insurance or annuity contract or as an inducement to receive a quote, submit an application or in connection with any other solicitation for the sale of an insurance or annuity contract. However, anything with an acquisition cost of \$3.00 or less shall not be considered an inducement.

B. Subsection A of this section does not prohibit the giving of promotional gifts or merchandise that is generally available to the public and not given in a manner to constitute an inducement to receive a quote or other solicitation or to purchase any insurance or annuity contract, nor does it prohibit insurers from providing sales incentives to producers.

C. This section does not prohibit the usual kinds of social courtesies as long as they are not related to a particular transaction as stated in Subsection 31A-23-302(2)(a). If the receiving of the social courtesy is dependant on obtaining a quote, submitting an application or purchasing a policy or contract, it is related to a particular transaction.

D. This section does not apply to title insurers or agents. Rule R590-153 is the applicable rule for the marketing of title insurance.

R590-154-12. Commission Contributions.

A licensee shall not give or offer to give a premium reduction by means of commission contribution back to the insurer for any purpose, including competition, unless the reduction is for expense savings and is justified by a reasonable standard and with reasonable accuracy. The insurer's underwriting files must document the savings in order to enable the commissioner to verify compliance. This documentation must demonstrate legitimate expense savings realized by the insurer and its agent.

R590-154-13. Prohibited Financing Arrangements.

A licensee may not obtain or arrange for third party financing of premium without the knowledge and consent of the insured.

R590-154-14. Acting as An Individual or Agency Licensee in Other Jurisdictions.

An individual or agency licensee licensed in the State of Utah under a resident license, may not sell, solicit, or negotiate insurance in another jurisdiction unless licensed or permitted by law to do so in that jurisdiction.

R590-154-15. Use of Comparative Information.

A. Every insurer marketing insurance in the State of Utah shall establish written marketing procedures to assure that any comparison of insurance contracts, annuities or insurance companies by its producers will be fair and accurate.

B. A licensee may not use any published rating information regarding an insurer in

connection with the marketing of any insurance contract or annuity unless that person also provides at the same time an explanation of what the rating means as defined by the rating service.

R590-154-16. Disclosure of Insurer in Group Insurance.

Every certificate of insurance or booklet describing coverage of a group insurance policy shall prominently state on the cover of the certificate or booklet the name of the actual insurer.

R590-154-17. Enforcement Date

The commissioner will begin enforcing the revised provisions of this rule 45 days from the rule's effective date.

R590-154-18. Severability.

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstance shall not be affected thereby.

**KEY: insurance
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Notice of Continuation June 10, 1998

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